

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementing a Nationwide, Broadband,	)	PS Docket No. 06-229
Interoperable Public Safety Network in the 700	)	
MHz Band	)	

**ORDER**

**Adopted: November 5, 2010**

**Released: November 5, 2010**

By the Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. By this *Order*, the Public Safety and Homeland Security Bureau (Bureau) grants the requests for waiver by (1) the City of Chesapeake, Virginia (Chesapeake) and (2) the San Francisco Bay Area Urban Area (Bay Area), each seeking a 30-day extension to pay the administrative fee due to the Public Safety Spectrum Trust (PSST) under the budget previously approved by the Bureau for administration of the long term *de facto* spectrum leases in the 700 MHz public safety broadband spectrum.<sup>1</sup>

**II. BACKGROUND**

2. On May 12, 2010, the Commission granted, with conditions, twenty-one waiver Petitions filed by public safety entities (Petitioners) seeking early deployment of statewide or local public safety broadband networks in the 700 MHz public safety broadband spectrum (763-768 MHz and 793-798 MHz).<sup>2</sup> The Commission found that the Petitioners generally met the standard for waiver of the Commission's rules and that the public interest warranted allowing early deployment, so long as the conditions imposed by that order were met. Among other conditions, the Commission required that each Petitioner obtain a long term *de facto* spectrum lease from the PSST,<sup>3</sup> and required that waiver recipients file certain reports on the status of their progress and deployment.<sup>4</sup>

<sup>1</sup> See City of Chesapeake, Virginia Request for Waiver of Deadline to Submit Lease Administration Fee, PS Docket 06-229 (filed Oct. 29, 2010) (*Chesapeake Waiver Request*); San Francisco Bay Area Urban Area Petition for Waiver of Deadline to Submit Lease Administrative Fee, PS Docket 06-229 (filed Nov. 2, 2010) (*Bay Area Waiver Request*).

<sup>2</sup> See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, 25 FCC Rcd 5145 (2010) (*Waiver Order*).

<sup>3</sup> *Id.* at 5152-53, ¶¶ 20-24.

<sup>4</sup> See *id.* at 5166, ¶ 64; see also, Office of Management and Budget Grants Emergency Approval for Information Collection Mandated Under 700 MHz Waiver Petition Order, PS Docket No. 06-229, *Public Notice*, DA 10-1097 (PSHSB June 18, 2010).

3. The Commission further required the PSST to submit for approval by the Bureau a budget for any proposed administrative fees to be paid by the Petitioners under the leases.<sup>5</sup> On August 11, 2010, the Bureau approved the PSST's proposed budget, finding the proposed \$15,000 first year administrative fee to be reasonable.<sup>6</sup> The Bureau appended the approved budget to the *Budget Order*, which included the notation that administrative fee payments would be due 60-days after the approval of a Petitioner's lease.<sup>7</sup> The Bureau approved the submitted leases on September 2, 2010.<sup>8</sup>

### III. DISCUSSION

4. On October 29, 2010, Chesapeake filed a request seeking a waiver of the 60-day deadline for submission of the administrative fee to the PSST.<sup>9</sup> Chesapeake states that it is in the process of "completing an administrative fund reallocation to support the PSST lease payment," which was necessitated when Chesapeake failed to obtain funding through the Broadband Technology Opportunities Program.<sup>10</sup> In support of its waiver request, Chesapeake further argues that a grant of the waiver will support the public interest goals of the *Waiver Order*, and that the minor delay in remitting the administrative fee is outweighed by the benefits of Chesapeake's proposed network.<sup>11</sup> Finally, Chesapeake argues that it has no other alternative than to seek the waiver, and that the Bureau granted a similar waiver to the District of Columbia.<sup>12</sup>

5. On November 2, 2010, the Bay Area also filed a request seeking a waiver of the 60-day deadline.<sup>13</sup> The Bay Area seeks the additional time "due to the need to resolve outstanding administrative issues with the Auditor/Controller and have the funds appropriately allocated for payment."<sup>14</sup> The Bay Area asserts that in light of this circumstance, the first prong of the Commission's waiver standard is satisfied.<sup>15</sup>

6. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>16</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly

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<sup>5</sup> *Waiver Order* at 5155, ¶ 33.

<sup>6</sup> See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, DA 10-1494 (PSHSB Aug. 11, 2010) (*Budget Order*).

<sup>7</sup> *Id.* at Appx. A.

<sup>8</sup> Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements Filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks, 25 FCC Rcd 12673 (PSHSB 2010) (*Lease Approval PN*).

<sup>9</sup> *Chesapeake Waiver Request* at 1.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.*

<sup>13</sup> *Bay Area Waiver* at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 47 C.F.R. § 1.925(b)(3)(i).

burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>17</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>18</sup> Based on the information before us, we conclude that a grant of Chesapeake's and the Bay Area's requests is warranted.

7. We strongly reiterate, however, that the conditions imposed on the Petitioners, including those related to the administrative fee payments, cooperation with the PSST, working with the Emergency Response Interoperability Center (ERIC) and other related deadlines and reporting, were found necessary and appropriate to ensure that the Petitioners had sufficient planning and commitment to the deployment process.<sup>19</sup> While we find that the limited waiver requested here is warranted under the circumstances presented by Chesapeake and the Bay Area, we continue to encourage all Petitioners to proceed diligently with each of the conditions imposed by the *Waiver Order* to ensure timely progress and open collaboration with all stakeholders.<sup>20</sup> We do not grant such a waiver lightly, and find it significant that both petitioners had funds available and designated for use, but needed additional time solely for their internal governmental processes to be completed. However, we expect that such circumstances should be anticipated in the future, and that deadlines will be met.

## V. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 301, 303, 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and 337, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver requests by Chesapeake and the Bay Area ARE GRANTED.

9. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392, and the *Waiver Order*, 25 FCC Rcd 5145, 5155, ¶ 33 (2010).

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)  
Chief, Public Safety and Homeland Security Bureau

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<sup>17</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>18</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>19</sup> See, e.g. *Waiver Order* at 5151, 5156, 5166, ¶¶ 18, 35, 64.

<sup>20</sup> On our own motion, we also grant a limited waiver of the deadline for Chesapeake's first quarterly report. Chesapeake filed its first quarterly report on October 28, 2010, ten days after the date upon which these reports were due. While such a delay is relatively minor given the early stages of Chesapeake's project, these reports serve as vital information to the Commission as it considers the success of these projects and its overall goals of supporting nationwide public safety broadband interoperability. Timely submission in the future by all waiver recipients is therefore paramount to the success of the Commission's overall efforts.